

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Luis F. CABRERA

Serial No.: 09/993,656

Filed: November 27, 2001

For: Virtual Networks

Atty. Docket No.: 003797.00214

Group Art Unit: 2194

Examiner: Truong, Lechi

Confirmation No.: 8108

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Box AF

U.S. Patent and Trademark Office
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

Applicants respectfully request review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is requested for the reasons stated in the below remarks. If any fees are required or if an overpayment is made, the Commissioner is authorized to debit or credit our Deposit Account No. 19-0733, accordingly.

Remarks

Having received and reviewed the final Office Action dated November 29, 2005, Applicants respectfully submit that the standing rejections are based on one or more clear errors, and that the appeal process can be avoided through a pre-appeal brief review as set forth in the Official Gazette notice of July 12, 2005.

The pending rejections fail to address all the claim limitations, and exhibit clear factual error with respect to interpretation of the Martino reference (U.S. Pat. No. 5,680,551) as well as other cited references. The specific errors relied upon in this Pre-Appeal Brief Request for Review include the following:

- Martino does not describe routing of a message based on an arbitrary portion of the message's contents, as claimed in claim 1. Applicant presented arguments in this regard in the Amendment filed March 23, 2005 (pp. 10-11), and further in the Request for Reconsideration filed October 19, 2005 (pp. 2-3). The final Office Action's entire response to Applicant's arguments (for all claims, not just claim 1) consists of:

As to the point (1), Mariton teaches EMS tracks the status of a message, and, depending on the facilities on the receiving side, can guarantee delivery to the destination application, col 2, ln 33-36/ determine whether the given message specifies an acknowledgment and if so, sending an acknowledge message to the sending entity, (col 30, ln 8-16)/ when the EMS router receives a commit from the next hop destination, it update the status of the next message in the QEB for the message is now complete. If the message has an EMH destination node... if message is complete, the EMS Router removes the related message from its queues (col 18, ln 20-28). The API commit is an interface; the next hop destination is application program.

Final Office Action, p. 11, para. 45. As is plainly evident, the Final Office Action does not rebut Applicants' arguments that Martino does not teach or suggest routing of a message based on an arbitrary portion of the message's contents, as claimed in claim 1

- Based on the above-cited portion of the final Office Action being the sum total of the Office's response to Applicants' arguments, the Office has failed to rebut Applicants' arguments with respect to all claims.
- The Office has yet to provide a rejection of claims 2-5 and 7 that addresses all the features of these claims. Applicants have repeatedly indicated as much in their responses, and respectfully submit that such claims should be indicated as allowable if a complete rejection is not provided. See Applicant Response, October 19, 2005, pp. 3-4.
- The Office has failed to establish a motivation to combine Martino and Narisi (U.S. Pat. No. 6,233,619) because they teach away from each other. See Applicant Response, October 19, 2005, pp. 4-5.

While Applicants believe the above points represent the clearest errors made by the Office, Applicants reserve the right to appeal on other bases and errors. For example, Applicants believe the rejections of claims 10, 11, 34, and 43-46 are also based on one or more Office errors.

Applicants will address such issues on appeal should the appeal of this case proceed after the Office's consideration of this paper.

CONCLUSION


All issues having been addressed, Applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same. However, if for any reason the review panel believes the application is not in condition for allowance or there are any questions, the review panel is invited to contact the undersigned at (202) 824-3153.

Respectfully submitted,

BANNER & WITCOFF, LTD.

Dated this 27 day of Jan., 2006

By:


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